

JUL 15 2004

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
BAR-002PA

In Re Application Of: Joseph Barilovits

| Application No. | Filing Date | Examiner | Customer No. | Group Art Unit | Confirmation No. |
|-----------------|-------------|-------------|--------------|----------------|------------------|
| 09/810,282 | 03/16/2001 | Purvis, Sue | | 1734 | 6583 |

Invention:

LABEL MARKING METHOD FOR MOVING WEB

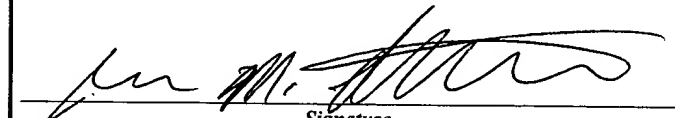
COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for filing this Appeal Brief is: \$165.00

- ☐ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-1424


Signature

Dated: July 12, 2004

James M. Robertson Reg. 36,905
233 South Pine Street
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864-583-0002 (fax)I certify that this document and fee is being deposited
on July 12, 2004 with the U.S. Postal Service as
first class mail under 37 C.F.R. 1.8 and is addressed to the
Commissioner for Patents, P.O. Box 1450, Alexandria, VA
22313-1450.
Signature of Person Mailing Correspondence

James M. Robertson

Typed or Printed Name of Person Mailing Correspondence

CC:

BAR-002PA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Joseph Barilovits
Serial Number: 09/810,282
Filed: 03/16/2001
For: Label Marking Method For Moving Web

Group Art Unit: 1734
Examiner: Purvis, Sue A.

BRIEF ON APPEAL

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In response to the final Office Action mailed October 14, 2003 and further to the Notice of Appeal filed March 12, 2004, Appellants hereby submit the requisite appeal brief pursuant to 37 CFR § 1.192.

REAL PARTY IN INTEREST

The real party in interest is Barvit Industrial, LLC located in Simpsonville, South Carolina, USA.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-19 are pending in this application. No claims have been canceled. No claims have been allowed. Claims 1-19 are the subject of this appeal.

STATUS OF AMENDMENTS

No amendments have been filed subsequent to final rejection.

SUMMARY OF INVENTION

The invention is directed generally to a process for marking a position along a moving web 34 of material using a removable label 32 having an interior zone of releasable adhesive and a pair of opposing end zones which are substantially adhesive free. An exemplary label is illustrated in FIG. 3. As illustrated in FIGS. 4A-4D and described at page 10, line 13 through page 11, line 6, the label may be discharged from a position in spaced relation away from the moving web 34. The label is placed such that one of the adhesive free zones projects outboard from the edge of the web while the adhesive zone and the other of the adhesive free zones are inboard of the edge. Thus, the portion of the label projecting outwardly is substantially adhesive free while the portion of the label in contacting relation with the web includes the interior zone of adhesive and an end zone which is adhesive free.

ISSUES

Whether claims 1, 3-8, 10, 12-17 and 19 are unpatentable under 35 U.S.C. 103(a) over the prior art practice of using marking labels with a single adhesive free end in view of U.S. Patent 5,351,426 to Voy et al..

Grouping of Claims:

For purposes of appeal for each ground of rejection which Appellant contests herein which applies to more than one claim, such additional claims, to the extent separately identified

and argued below, do not stand or fall together. In this regard, the following claim groups stand or fall together:

Claims 1, 3 and 8.

Claims 4, 13 and 19

Claims 5-7;

Claims 10, 12, and 17; and

Claims 13-16.

ARGUMENT

Whether claims 1, 3-8, 10, 12-17 and 19 are unpatentable under 35 U.S.C. 103(a) over the prior art practice of using marking labels with a single adhesive free end in view of U.S. Patent 5,351,426 to Voy et al..

As regards claims 1, 3 and 8, Appellants respectfully submit that the outstanding rejection of the claims in this group appears to be deficient since the proposed modification of the prior art practice (i.e. the elimination of adhesive from the end of the label projecting into the web) appears to be contrary to the accepted wisdom in the art. Moreover, the prior art does not appear to provide any suggestion to proceed against such accepted wisdom. In this regard Appellants note that the Office Action acknowledges that the admitted prior art does not disclose adhesive free zones on both ends of the label. In order to address this deficiency the Office Action relies on the teaching in Voy et al. that labels are known which include adhesive free zones inset from the label periphery. The Office Action then concludes that it would have been obvious to include a second adhesive free end to labels used in the prior practice of marking moving webs based on the teachings of Voy et al..

In prior responses to this rejection Appellants have noted that the proposed modification of the prior art labeling practices to incorporate the labels of Voy et al. appears to be contrary to the accepted wisdom in the art. In support of this assertion of the accepted state of wisdom in the art Appellants provided a declaration from Mr. Joseph Egan stating that in order to ensure the maintenance of adhesion on moving webs prior labels were designed to avoid the occurrence of substantial adhesive free zones at label ends inboard of the web edge. Appellants have also

provide to the Examiner product literature from NOVATION INC. and VACUUMATIC which describes the admitted prior labeling practice and specifically indicating that the deadened glue area is on the protruding part of the label. There is no indication of deadened glue areas anywhere else on the label. Thus, it appears that these labels would have been configured exactly as Mr. Egan describes in his declaration thereby lending credibility to the statements in the Egan declaration. Appellants thus respectfully submit that the present invention represents a departure from the accepted wisdom in the art. As pointed out at MPEP §2145, proceeding contrary to accepted wisdom in the art is evidence of non-obviousness.

Voy et al. is used in the rejection to show that labels with patterned adhesives exist and can stick to a web. However, the rejection does not take into account the fact that in Voy the labels are fully supported from beneath by the carrier web at all times. This is substantially different from the claimed practice in which one end of the label extends outboard from the web to which it is applied. As will be appreciated, having a free end projecting outwardly without underlying support will give rise to a moment arm which will tend to stress the adhesive bond inboard of the edge. Thus, it is respectfully submitted that the fact that the fully supported labels in Voy do not fall off would not have indicated to the skilled artisan that adhesive could be eliminated from the inboard end zone when one end of the label projects outwardly from a web edge. To the contrary, since Voy does contain a very clear teaching that the patterned adhesive makes it easier to remove the label, one of skill in the art would no doubt understand that this added ability to release would be increased even further in an arrangement where one end of the label projects away from the edge as presently claimed and would thus increase the likelihood that the label would fall off prematurely.

As regards claims 4, 13 and 19, each of these claims requires that the adhesive zone is disposed substantially at the center of a rectangular label with adhesive free zones disposed between the adhesive zone and each lateral edge. In an advisory action dated March 19, 2004 addressing Appellants' arguments based on the Egan declaration and maintaining the rejection, the Examiner noted that the Egan declaration stated that substantial adhesive free zones were to be avoided while the claims do not require that the adhesive free end zones be substantial in size. It is respectfully submitted that the Examiner's analysis does not take into account the fact that

independent claim 1 (from which claim 4 depends) independent claim 10 (from which claim 13 depends) and independent claim 19 all require that the label be attached to the edge of the material web with one of the substantially adhesive free zones “projecting substantially outboard of the material web... such that the portion of the label projecting outboard from the edge of material is substantially adhesive free.” Such language used in conjunction with the requirement for the adhesive zone to be disposed substantially at the center of the label clearly indicates adhesive free zones of substantial width on either side of the centrally located adhesive zone. Otherwise, the non-adhesive material on one side could not project substantially outboard. Thus, the positions advanced in the Egan declaration do, in fact, appear to support patentability of claims 4, 13 and 19

As regards claims 5-7, each of these claims requires not only that the adhesive zone be disposed substantially at the center of the label but also that the adhesive zone occupy not more than a limited percentage of the label. Thus, the adhesive free zones on either side of the adhesive zone are certainly substantial. As made clear by the Egan declaration, the presence of a substantial adhesive free zone inboard of the edge is a departure from the accepted wisdom.

As regards claims 10, 12, and 17, each of these claims requires expelling a label from a position at a spaced distance away from the web for adherence at a position along the edge. It is respectfully submitted that the teachings of Voy et al. provide no indication of the ability to achieve suitable adhesion using such remote discharge of a patterned label wherein one end of the label is unsupported. Moreover, in prior known remote application processes, it has been considered necessary to have a substantially continuous adhesive contact zone inboard from the edge. Thus, the elimination of adhesive from the inboard region of the label in such a practice represents a substantial departure from the accepted wisdom relating to remote discharge label application.

Finally, as regards claims 13-16, each of these claims requires not only remote label discharge but also that the adhesive zone be disposed substantially at the center of the label. Moreover claims 14-16 require only limited coverage by the adhesive. Thus, the adhesive free zones on either side of the adhesive zone are certainly substantial. As made clear by the Egan declaration, the presence of a substantial adhesive free zone inboard of the edge is a departure

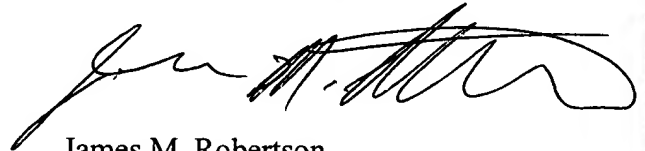
from the accepted wisdom. Appellants respectfully submit that this is particularly true for a remote discharge application process.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the cited art does not support a continued obviousness rejection. Therefore, reversal of all rejections directed to the identified claims is courteously solicited.

A petition for a two (2) month extension of time accompanies this brief. To any extent as may be necessary, a request for an additional extension is hereby made and authorization is made to deduct any required fee from Deposit Account 50-1424. In calculating such fees kindly note that Appellants claim small entity status.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James M. Robertson', with a stylized flourish at the end.

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APPENDIX

CLAIMS ON APPEAL

1. A method for marking a position along the length of a moving material web, the method comprising: attaching a removable label to an edge of the material web to be marked, wherein the label comprises an upper show surface and a contact surface facing away from the upper show surface for contacting the material web, the contact surface having an adhesive zone of a releasable adhesive extending across an interior portion of the contact surface and a pair of opposing substantially adhesive free zones extending between the adhesive zone and opposing perimeter edges of the label, the label being attached to the edge of the material web by the releasable adhesive with one of said pair of opposing substantially adhesive free zones projecting substantially outboard of the material web and with the other of said pair of opposing substantially adhesive free zones being disposed inboard of the edge of the material web such that the portion of the label projecting outboard from the edge of the material web is substantially adhesive free.

2. The invention according to claim 1, wherein the upper show surface is of a substantially reflective metallic character.

3. The invention according to claim 1, wherein said label is substantially rectangular in geometry having a top edge, a bottom edge and two lateral edges.

4. The invention according to claim 3, wherein the adhesive zone is disposed substantially at the center of the contact surface and wherein one of said pair of substantially adhesive free zones extends between the adhesive zone and each of said two lateral edges.

5. The invention according to claim 4, wherein the adhesive zone occupies not greater than about 75 percent of the total surface area of the contact surface.

6. The invention according to claim 4, wherein the adhesive zone occupies less than about 70 percent of the total surface area of the contact surface.

7. The invention according to claim 4, wherein the adhesive zone occupies less than about 60 percent of the total surface area of the contact surface.

8. The invention according to claim 1, wherein the material web comprises a textile fabric.

9. The invention according to claim 1, wherein the label is heated prior to being attached to the edge of the material web.

10. A method for marking a position along the length of a moving material web, the method comprising: expelling a removable label onto the material web to be marked from a position at a spaced distance away from the material web for adherence at a predetermined position along the edge of the material web, wherein the label comprises an upper show surface and a contact surface facing away from the upper show surface for contacting the material web, the contact surface having an adhesive zone of a releasable adhesive extending across an interior portion of the contact surface and a pair of opposing substantially adhesive free zones extending between the adhesive zone and opposing perimeter edges of the label, the label being attached to the edge of the material web by the releasable adhesive with one of said pair of opposing substantially adhesive free zones projecting substantially outboard of the material web and with the other of said pair of opposing substantially adhesive free zones being disposed inboard of the edge of the material web such that the portion of

the label projecting outboard from the edge of the material web is substantially adhesive free.

11. The invention according to claim 10, wherein the upper show surface is of a substantially reflective metallic character.

12. The invention according to claim 10, wherein said label is substantially rectangular in geometry having a top edge, a bottom edge and two lateral edges.

13. The invention according to claim 12, wherein the adhesive zone is disposed substantially at the center of the contact surface and wherein one of said pair of substantially adhesive free zones extends between the adhesive zone and each of said two lateral edges.

14. The invention according to claim 13, wherein the adhesive zone occupies not greater than about 75 percent of the total surface area of the contact surface.

15. The invention according to claim 13, wherein the adhesive zone occupies less than about 70 percent of the total surface area of the contact surface.

16. The invention according to claim 13, wherein the adhesive zone occupies less than about 60 percent of the total surface area of the contact surface.

17. The invention according to claim 1, wherein the material web comprises a textile fabric.

18. The invention according to claim 1, wherein the label is heated prior to being attached to the edge of the material web.

19. A method for marking a position along the length of a moving material web, the method comprising: attaching a removable label to an edge of the material web to be marked, wherein the label is substantially rectangular in geometry bounded by a top edge, a bottom edge and two lateral edges, the label comprising an upper show surface and a contact surface facing away from the upper show surface for contacting the material web, the contact surface having a substantially centrally disposed adhesive zone of a releasable adhesive and a pair of opposing substantially adhesive free end zones extending between the adhesive zone and each of said two lateral edges, the label being attached to the edge of the material web by the releasable adhesive with one of said pair of opposing substantially adhesive free zones projecting substantially outboard of the material web and with the other of said pair of opposing substantially adhesive free zones being disposed inboard of the edge of the material web, such that the portion of the label projecting outboard from the edge of the material web is substantially adhesive free.